

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE ADOPTION OF RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT, 26 DEL. C. §§351-363, AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005); REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; SEPTEMBER 22, 2009; AUGUST 17, 2010; SEPTEMBER 6, 2011; SEPTEMBER 18, 2012; FEBRUARY 2, 2017)	) ) ) ) ) ) ) ) ) ) )	PSC REGULATION DOCKET NO. 56
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**ORDER NO. 9522**

**AND NOW**, this 12<sup>th</sup> day of December 2019, the Delaware Public Service Commission (“Commission”) determines and orders as follows:

**WHEREAS**, on November 8, 2018, the Commission approved Order No. 9289, which directed publication of the Commission-approved final regulations (“Final Regulations”) implementing Sections 354(i) and (j) of the Renewable Energy Portfolio Standards Act (“REPSA”) in the December 2018 issue of the Delaware Register of Regulations; and

**WHEREAS**, on December 28, 2018, the Delaware Department of Natural Resources and Environmental Control (“DNREC”) filed in the Delaware Superior Court in New Castle County (the “Court”) a complaint for declaratory relief (“Complaint”), including a request to stay the Final Regulations, which action is captioned *State of Delaware, Dept. of Natural Resources and Environmental Control v. Delaware Public Service Commission*, Case No. N18C-12-260 FWW; and

**WHEREAS**, on March 1, 2019, the Delaware Division of the Public Advocate (the “DPA”) filed a Motion to Intervene and proposed Answer, including the affirmative defense of lack of standing and opposing DNREC’s requested stay; and

**WHEREAS**, on March 5, 2019, the Commission filed its Answer, including the affirmative defense of lack of standing and opposing DNREC’s requested stay; and

**WHEREAS**, on March 12, 2019, DNREC filed its opposition to the DPA’s intervention; and

**WHEREAS**, on March 18, 2019, the Court heard oral argument on the DPA’s Motion to Intervene, which the Court granted in its Letter Order dated July 11, 2019; and

**WHEREAS**, the Court held a scheduling conference on August 22, 2019, establishing deadlines for the Commission and the DPA to file their Motions to Dismiss and for DNREC to file its Motion to Stay on September 6, 2019, and directing responses and replies to be filed on September 20<sup>th</sup> and 27<sup>th</sup>, respectively; and

**WHEREAS**, on October 7, 2019, following oral argument on the Commission’s and the DPA’s respective Motions to Dismiss and DNREC’s Motion to Stay, the Court advised that it would reserve its decision and, due to the approaching October 14, 2019 deadline for DNREC to submit calculations pursuant to 26 *Del. Admin. C.* § 3008-3.2.21.5, conveyed to the Commission’s counsel the Court’s request that the Commission consider extending the Final Regulations’ October 14, 2019 deadline for DNREC to submit the required calculations (“Calculations”) of the total cost of compliance with renewable energy requirements and the total cost of retail electricity for retail electricity suppliers (“Calculation Deadline”) for 30 days; and

**WHEREAS**, on October 8, 2019, the Commission granted the Court's request to extend the Calculation Deadline to November 13, 2019, and Commission counsel filed a letter with the Court on October 8, 2019 conveying the Commission's action; and

**WHEREAS**, on November 5, 2019, DNREC filed a Letter in Superior Court ("November Letter Request") requesting a temporary stay until November 13, 2019 at which time DNREC expected to submit a status report with a formal request for a stay of the litigation until May 31, 2020, in order to allow the Administration to work with the General Assembly to craft revisions to the REPSA that would obviate the need for the Superior Court litigation; and

**WHEREAS**, the Commission and the DPA submitted written responses to the November Letter Request; and

**WHEREAS**, on November 12, 2019, the Court heard oral argument on the November Letter Request, and denied DNREC's requested relief in a ruling issued from the bench; and

**WHEREAS**, DNREC did not submit the Calculations to the Commission on November 13, 2019; instead, on December 2, 2019, DNREC Secretary Garvin wrote to the Commissioners requesting the same relief that it had requested from the Court and that the Court had rejected ("December Letter Request"); and

**WHEREAS**, the Commission received written objections to the December Letter Request from David Stevenson of the Caesar Rodney Institute and Gary Myers; and

**WHEREAS**, at its regularly-scheduled meeting on December 5, 2019, the Commission heard oral argument in favor of the December Letter Request from DNREC, Commission Staff's support of an extension until such time as the Court issues its decision on the motions, and arguments in opposition to the December Letter Request from the DPA, Commission Counsel, Mr. Myers, and Mr. Stevenson; additionally, the Commission took sworn testimony from Glenn

Moore of Delmarva Power & Light Company, and unsworn testimony from Dale Davis of the Delaware Solar Energy Coalition and Nicholas DiNardo, Legislative Aide to State Senator Harris McDowell, and considered taking action on DNREC's non-compliance with 26 *Del. Admin. C.* § 3008-3.2.21.5; and

**WHEREAS**, the Commission conducted public deliberations and held a public vote on DNREC's failure to comply with the Calculations Deadline as extended pursuant to the Court's request and on DNREC's December Letter Request;

**NOW, THEREFORE, BY THE 4-0 VOTE OF COMMISSIONERS CONAWAY, GRAY, KARIA, AND DREXLER (CHAIRMAN WINSLOW ABSTAINED), THE COMMISSION HEREBY FINDS AND ORDERS AS FOLLOWS:**

1. That the Commission denies DNREC's December Letter Request.
2. That the Commission directs DNREC to provide the Calculations on or before January 15, 2020.
3. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chairman

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

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Secretary